

**FREQUENTLY ASKED QUESTIONS
MANDATORY FURLOUGH IN THE STATE PERSONNEL SYSTEM
CREATED JULY 22, 2009, UPDATED JULY 29, 2009**

The following are frequently asked questions regarding mandatory furloughs. This document will be updated as warranted. * Denotes added questions or information.

1. What is the purpose of furloughs?

The nation is in the midst of the worst economic downturn since the Great Depression. Although Colorado is better off economically than most states, it is not immune from budgetary shortfalls. The slowing economy has resulted in increased unemployment and declining consumer spending, which, in turn, have adversely impacted State revenues. Based on the most recent revenue forecasts released on June 22, 2009, the State must close a budget gap of \$384 million in fiscal year 2009-10. In light of falling revenues and in order to keep the State's budget in balance, the administration is undertaking aggressive budget cutting measures in the current fiscal year, and those budget cutting measures include reducing the State's personal services expenditures. One of the tools available to manage a portion of the revenue shortfall is to order mandatory furloughs of most state employees.

2. What is a mandatory furlough?

Mandatory furloughs are days off without pay.

3. Who makes the decision to order mandatory furloughs?

The Governor makes the decision to order mandatory furloughs. Under the Colorado Constitution, the Governor is vested with the executive power of the state, and this includes close supervision of the funds appropriated by the General Assembly. In the exercise of that responsibility, he has the authority to order mandatory furloughs in the event of a revenue shortfall like the one the State is currently experiencing. This authority was confirmed by the Attorney General in a formal opinion issued on July 16, 2009. *See* Attorney General Opinion 09-05. In addition, under C.R.S. § 24-2-102(4), the Governor may exercise his discretion by executive order to suspend or discontinue functions or services of state government in the event of insufficient revenues. The Governor may take actions necessary to reduce expenditures through mandatory furloughs.

4. What are the scheduled furlough days?

The furlough days specified to date are: Tuesday, September 8, 2009 (day after Labor Day); Friday, October 9, 2009 (Friday before the Columbus Day weekend); Friday, November 27, 2009 (day after Thanksgiving); and Thursday, December 31, 2009 (New Year's Eve). On the furlough days, most non-essential state government offices will be closed. As noted above, these mandatory furlough days are being ordered to meet a portion of the revenue shortfall projected for this fiscal year. While the State will continue to employ all of the tools at its disposal to find

additional personal services savings, including but not limited to vacancy savings and voluntary furloughs, separations, and retirements, additional mandatory furlough days beyond the four identified in the Executive Order remain a very real possibility. The Governor's Office will continue work with the executive directors, the State Personnel Director, other elected officials, certified employee organizations, and frontline employees to reduce the budget with the smallest possible reduction in services and minimal impact on the citizens. But the fact remains that the size of the projected budget shortfall in the current fiscal year will require real sacrifice on the part of everyone. As a result, additional mandatory furlough days may be required during the first half of 2010.

5. Why are employees required to take designated furlough days instead of allowing employees to pick their own days?

There are a variety of reasons that the State opted to designate the mandatory furlough days instead of permitting employees, offices, divisions, or departments to select the days on their own. First, by designating days on a statewide basis, citizens will know and can predict what days State services will or will not be available. Second, as noted below, there are management issues that arise during weeks in which employees are on mandatory furloughs, including additional precautions that must be taken to ensure that the State remains in compliance with the federal Fair Labor Standards Act ("FLSA"). Third, administering the furloughs will create challenges for each department's payroll and human resources staff, and those challenges are far more difficult to manage if all employees chose their own furlough days. Fourth, there are some additional savings that will be realized by shutting down state services entirely on a single day that would not be captured by having rolling furloughs throughout the state workforce.

6. How were the furlough days selected?

Staff in the Governor's Office worked in partnership with Colorado WINS and the Association of Colorado State Patrol Professionals ("ACSPP"), the two employee organizations representing state employees, and the State Personnel Director to decide how to implement the mandatory furloughs required by the Executive Order. To the greatest extent practical, the mandatory furlough days will be spread out throughout the fiscal year and will be adjacent to existing state holidays.

7. Are there some employees who will be required to take their mandatory furlough days on days other than the designated furlough days?

Yes. Some offices cannot be entirely shut down on a designated mandatory furlough day without imposing a substantial hardship on or adversely impacting the health or safety of the citizens of the State or because doing so would substantially impair the ability of the office to meet its legal obligations. Because of these limitations, the Governor granted each Executive Director the flexibility to determine whether it is necessary and in the best interest of the State to permit certain employees subject to mandatory furlough to take their furlough days on days other than those designated above. Although this exemption will be sparingly invoked, such flexibility is necessary to ensure that the State continues to meet its obligations during the furloughs. Those employees occupying positions that cannot be furloughed on the designated furlough days will take their furlough days on alternative dates determined by their Executive Director.

8. Who is covered by a mandatory furlough?

Subject to the exemptions set forth in the Executive Order, employees in the Governor's Office, Lieutenant Governor's Office, and employees of the following executive departments are subject to the mandatory furloughs: Department of Agriculture; Department of Corrections; Department of Education; Department of Higher Education; Department of Health Care Policy and Financing; Department of Human Services; Department of Labor and Employment; Department of Local Affairs; Department of Military and Veterans Affairs; Department of Natural Resources; Department of Personnel and Administration; Department of Public Health and Environment; Department of Public Safety; Department of Regulatory Agencies; Department of Revenue; and Department of Transportation.

9. Are employees in the Judicial Branch or Legislative Branch included in the mandatory furloughs ordered by the Governor? What about employees of institutions of higher education?

No. The State constitution vests management of the Judicial and Legislative branches in the heads of those branches, and State law vests management of the State's institutions of higher education in the leaders of those institutions. Therefore, employees of those branches and at higher education institutions (including State Personnel System employees) will be exempt from the furloughs ordered by the Governor's Executive Order. At this time, it is anticipated that those branches and institutions will meet the budget cuts required by the revenue shortfall utilizing appropriate budget-cutting measures.

10. Are employees in the departments of Law, State, and Treasury included in the mandatory furloughs?

No. The departments of Law, State, and Treasury are exempted from the furloughs required by the Executive Order. At this time, it is anticipated that those departments will meet the budget cuts required by the revenue shortfall utilizing appropriate budget-cutting measures.

11. Who will be exempt from mandatory furloughs?

There are state employees in departments that are subject to the Executive Order who will be exempt from the mandatory furlough requirement. In crafting the exemptions, the Governor's Office endeavored to balance fairness and equity with the need to ensure that essential round-the-clock services and services in high-demand because of the economic downturn are not disrupted. A description of the positions that will be exempted from mandatory furloughs is set forth in the Directives section of the Executive Order.

12. My position is paid with federal funds or cash funds, so why am I required to furlough?

Furloughing state employees is far from an ideal situation. In formulating the furlough plan, position funding was among the competing factors considered. As noted above, however, a great deal of weight was given to fairness and the need to treat similarly situated employees the same in order to minimize the impact on employee morale. Taking all concerns into consideration led to the decision to standardize furloughs to the greatest extent possible, which led to the inclusion of federally-funded and cash-funded employees in the State's furlough plan.

13. The State Personnel System created by law is supposed to ensure that all classified employees are treated the same. So, why are some classified employees in certain departments exempt from the mandatory furloughs?

The Colorado Constitution requires that classified employees “hold their respective positions during efficient service or until reaching retirement age, as provided by law. They shall be graded and compensated according to standards of efficient service which shall be the same for all persons having like duties.” Colo. Const. art. XII, § 13(8). This provision requires equal pay for equal work, but does not restrict the Governor’s authority or ability to exempt departments or positions from a mandatory furlough. While the Colorado Constitution requires equal pay for equal work; it does not require that every position within a classification or an executive department be treated identically. Employees who are furloughed receive less pay, but they also work fewer hours, keeping with the equal pay for equal work requirement. This issue is more thoroughly addressed on pages 5 and 6 of Attorney General Opinion 05-09 issued on July 16, 2009.

14. Does the furlough apply to non-classified employees?

Yes. The furlough applies to non-classified employees in those departments subject to the furloughs as listed in question 8.

15. What happens to my annual and sick leave accrual during furloughs? Is it prorated for the day of unpaid leave?

No. As furloughs are mandated and there is no opportunity to work, employees continue to earn sick leave, annual leave and holidays while on mandatory furlough as though the furlough had not occurred.

16. Will my service date be affected?

No, there is no impact - service dates are not adjusted during furloughs.

17. Will my Short-term Disability (STD benefits) or Workers Compensation Benefits be impacted by the furlough days?

These benefits are based on salary. Because a mandatory furlough is not a permanent reduction in salary, there is no change in these benefits.

18. Will my health, life, dental insurance be affected?

No, there is no impact to insurance benefits from a furlough. The State continues to pay the employer’s share of insurance premiums during a furlough, just as the employee’s share will continue to be deducted as normal.

19. I am a FLSA-exempt employee (not eligible for overtime), is my pay subject to reduction?

Yes. Under a mandatory furlough, pay is subject to reduction, because the intent is to save personal services dollars. Exempt status is changed for the workweek in which a mandatory furlough occurs and pay is reduced. In effect, all FLSA-exempt employees become eligible for overtime in the week a furlough occurs. Therefore, exempt employees will be required to complete timesheets for the week in which a furlough occurs, and hours must be managed in the same manner as overtime-eligible employees to avoid any overtime liability to the State. This

means no work can be performed on the furlough day, including but not limited to working from an alternate office location or home.

In addition, any exempt or non-exempt employee may not work or be on paid leave any more than 32 hours in the week in which a mandatory furlough day occurs and pay is reduced. During the furlough week, all employees (FLSA-exempt and non-exempt) must be paid for each hour worked. Thus, if an employee works more than 32 hours during the furlough week the anticipated personal services cost savings will be lost. Further, if an employee who is subject to the furlough works on a furlough day and is not paid for that time or is not paid for all actual hours worked in a furlough week, the State is exposed to potential liabilities.

20. I am designated as an essential employee; will the furlough day be counted in my total hours for overtime purposes?

By statute (C.R.S. § 24-50-104.5), employees who are designated as essential employees must have paid leave included in all hours worked for overtime purposes. Because a furlough day is unpaid, that time is not counted.

21. Is it okay for employees to work on a furlough day? Can an appointing authority require employees to work, especially FLSA-exempt employees?

An employee that is not specifically exempted by the Governor's executive order cannot work on a furlough day. However, if an employee is required to work due to business needs (e.g., scheduled conference or training or is called in by the appointing authority for an emergency situation), an alternate furlough day must be designated by the employee's Executive Director, preferably within the same pay period or same work week. Any employee that is not exempt from the furloughs cannot work more than 32 hours in the week that the employee takes the furlough. Similarly, if an alternate furlough day is granted, the employee may not work or be in paid leave status for more than 32 hours in the week of the alternate furlough day.

22. How is one day of furlough pay calculated?

The furlough days will be treated as a deduction from employees' pay based on a percentage of the annualized hourly rate. For example, if a full-time employee's salary is \$2,000 per month, one furlough day will deduct approximately \$92.32 from that month's salary ($2,000 * 12 = 24,000 / 2080 = 11.54 * 8 = \92.32). The annualized hourly rate includes any temporary pay differentials.

23. Will a furlough decrease my leave payout?

No. Leave payouts are not decreased because of a furlough day.

24. What happens if I experience an FMLA-qualifying event during a furlough or I am on FMLA when the furlough occurs?

For employees who are currently designated and using FMLA, the designation is not impacted. The only change is that if an employee is on paid FMLA, the day of furlough will be unpaid. If the employee was on unpaid FMLA there is no change. The furlough day will run concurrent with FMLA.

25. How do furloughs affect my retirement benefits?

*In the month of a furlough, the State and employee total dollar contribution towards retirement benefits will decrease commensurate with the temporary reduction in pay due to the furlough. However, in many cases the impact upon PERA benefits may be relatively small. PERA has issued information on their Web site at <http://www.copera.org/pdf/5/5-103a.pdf>. For questions about Highest Average Salary (HAS) calculations, purchase of service credit, and other retirement issues, contact PERA customer service at 303-832-9550 (1-800-759-7372 toll free) or visit the PERA website at: <http://www.copera.org/> and watch for updates in the “Latest News” link.

26. How will the furlough days apply to part-time employees?

The furlough day will be prorated based on the percentage of time the part-time employee is scheduled to work, just like other types of leave. For example, if an employee typically works four 8-hour days in a week then the employee would be furloughed 80% of an 8-hour day or 6.4 hours.

27. Can employees who are furloughed file for unemployment?

State employees who are furloughed may file an unemployment claim, but eligibility is determined by the State Department of Labor and Employment. However, most state employees will not be eligible for unemployment benefits based upon furlough days. Further information will be posted on coworkforce.com.

28. Since the mandatory furlough day is before or after a holiday do employees still receive holiday pay?

Yes. Employees only need to be in paid status the day before or after a holiday occurs to receive the holiday pay.

29. What if an employee is on a flexible schedule and works four 10-hour days? How will a furlough day be applied?

Flexible schedules can still apply. All employees, including those on flexible schedules, can only work or be in paid leave status for 32 hours in a week in which a furlough is taken and no employee will have more than 8 hours deducted for a single furlough day. For example, an employee can work three 10-hour days as normal and request annual leave for the remaining two hours for that furlough workweek.

Another common schedule is the “5x4” where employees work four days every other week. When these arrangements were originally approved they required establishing a permanent 40-hour workweek for these individuals that differs from the State’s standard workweek. If the furlough day is scheduled to occur the day the employee would be off, the employee needs to work with their appointing authority and department HR office to make alternate arrangements.

30. Can I take an extra furlough day to help a fellow employee?

No. However, if you are in a position to help other employees that are struggling financially there are options. You can take the equivalent amount of money that you were willing to furlough for another employee and donate it to The Working Together Foundation or the Colorado State Employee Assistance Program for the benefit of your fellow state employees. Working Together is a non-profit entity created exclusively for state employees. It provides

emergency financial assistance for basic living necessities. For more information visit the foundation's website at <http://www.state.co.us/dhr/wt> or call 303-831-8645 (voice messaging only). The Colorado State Employee's Assistance Program (C-SEAP) may be contacted at webcseap@state.co.us or 800-821-8154. DPA strongly encourages employees to take advantage of any and all resources available to them.

31. My spouse and I are both State employees - it feels unfair because it seems like a "double hit". Why do we both have to take furlough days?

Furlough days are not based on personal circumstances. Although everyone has individual concerns, the furloughs are based on business decisions related to the budget. Therefore, it is applied equally to all affected positions. Every salary is impacted equally regardless of household circumstances. For employees where this creates a financial emergency you may be eligible for assistance through the Working Together Foundation or C-SEAP.

32. If I have been exempted from the mandatory furlough, may I take paid leave on a furlough day?

Designated furlough-exempt employees, who would normally be scheduled to work on a designated furlough day, are expected to work on that day. The basis for the Governor's exemption of particular positions is that these employees are necessary to perform critical business functions and maintain critical staffing levels. Paid leave of any kind, including compensatory time, shall not be approved for any employee, with the exception of jury duty leave. No annual leave will be approved for any designated furlough day. If annual leave has already been approved in advance, the department shall withdraw the approval for that designated furlough day. Employees may request and Executive Directors have the flexibility to grant leave without pay for furlough-exempt employees who are normally scheduled to work and have requested leave in advance on a furlough day. No donated leave under a department's leave sharing program shall be approved for a designated furlough day. If a furlough-exempt employee calls in sick on a scheduled furlough day, the mandatory furlough must be applied, not paid sick leave. The only exception for a furlough-exempt employee to be absent on a furlough day is if an FMLA qualifying event occurs on that day. In such a case, FMLA will be designated as appropriate and the leave will be unpaid.

33. I have been exempted from the furlough; can I choose to take leave without pay on a furlough day?

Executive directors will have the discretion to grant leave without pay to furlough-exempt employees who would normally be scheduled to work on a designated furlough day or who have requested paid leave on a furlough day. If you are a state personnel system employee and exempt from the furlough, you must either be approved for unpaid leave or be at work the day of the furlough. If your office is partially or completely closed and there are not enough tasks to occupy the furlough day, unpaid leave may be granted by the Executive Director for the time you are not working.

***34. Can my supervisor require me to make up the work time lost by a furlough day?**

No. It is anticipated that services may diminish during the week of the furlough. However, furloughed employees, including those that are FLSA-exempt, are not expected to work extra hours in non-furlough weeks to make up for the work time lost due to a furlough. Supervisors are expected to use sound business judgment and respect and promote employee work-life

effectiveness. In addition, non-exempt employees who are required to work additional hours during non-furlough weeks would likely increase overtime costs and negate any cost savings to the State realized from the furlough. Although FLSA exempt employees are not bound by 40 hour workweeks during non-furloughed weeks, they should not be expected to work additional hours to make up for furlough time or more hours than they would normally work if it were not for the mandatory furloughs.

***35. Do I have the right to grieve or appeal the fact that I am being furloughed? What about any other decision made in connection with the Executive Order?**

The Colorado Constitution and Colorado statutes provide the grounds for a grievance or appeal of an adverse employment decision. The Executive Order neither expands nor diminishes those grounds for a grievance or appeal, providing as follows: “Decisions made in connection with implementing this Executive Order, including but not limited to determinations regarding which positions are and are not exempt from mandatory furlough and whether and when to require employees to take alternative furlough days, are not subject to review or appeal, except for claims of discrimination, whistleblower, or those claims expressly provided a right of appeal or hearing in the State Constitution or under State statute.”

Should you believe you have an appealable or grievable claim in connection with the Executive Order and should you wish to pursue it, you must follow the procedures set forth in the State Personnel Board Rules. As provided in Personnel Board Rule 8-8, “an employee must initiate the grievance process within 10 days of the action or occurrence being grieved.”

***36. Will the furloughs extend an employee’s probationary or trial service period?**

No. An employee’s probationary period or trial service period is not extended due to the furlough because there is no opportunity to work during a furlough day or alternate furlough day.